

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

CONNECTU LLC

Plaintiff,

v.

MARK ZUCKERBERG, EDUARDO  
SAVERIN, DUSTIN MOSKOVITZ, ANDREW  
MCCOLLUM, CHRISTOPHER HUGHES, and  
FACEBOOK, INC.,

Defendants.

MARK ZUCKERBERG, and  
FACEBOOK, INC.,

Counterclaimants,

v.

CONNECTU LLC,

Counterdefendant,

and

CAMERON WINKLEVOSS, TYLER  
WINKLEVOSS, and DIVYA NARENDRA,

Additional Defendants on  
Counterclaims.

Civil Action No.: 04-11923-DPW

Judge Douglas P. Woodlock

Magistrate Judge Robert B. Collings

**FACEBOOK DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR LEAVE TO FILE A SURREPLY  
IN SUPPORT OF ITS OPPOSITION TO THE MOTION TO DISMISS**

Defendants Mark Zuckerberg, Dustin Moskovitz, Andrew McCollum, Christopher Hughes, and Facebook, Inc. (collectively, "Facebook Defendants") oppose Plaintiff ConnectU, LLC's ("ConnectU") motion for leave to file a surreply (docket no. 117) in opposition to the Facebook Defendants' Motion to Dismiss.

Put simply, the arguments raised in ConnectU's proposed surreply could have been, but were not raised in its opposition brief in response to Facebook Defendants' opening brief, and Facebook Defendants already amended their reply brief at the request of ConnectU. Therefore, Facebook Defendants respectfully request that the Court deny ConnectU's motion for leave to file a surreply brief.

By way of background, after the Facebook Defendants filed their reply in support of their Motion to Dismiss, ConnectU requested that Facebook Defendants clarify an issue regarding the residency of Mr. Zuckerberg. In response, on November 14, 2005, Facebook Defendants sought leave of Court to file an amended reply, to add footnote number 2 to its reply (docket no. 111).

On November 16, 2005, ConnectU then filed a "letter brief" with the Court (docket no. 114), to respond to Facebook Defendants' amended reply brief. That same day, the Court struck ConnectU's letter brief *sua sponte*, stating that such a document could not be filed without leave of Court, *see* L.R. 7.1(B)(3), and that the "letter to the judge" format was not proper. On November 17, 2005, ConnectU then filed its motion for leave to file a surreply, and attached its proposed surreply to the motion,<sup>1</sup> without having the assent of Facebook Defendants.

Although the parties here have routinely assented to the filing of motions for leave to file replies, they have not assented to the filing of motions for leave to file surreplies, to limit the burden on the Court. Moreover, ConnectU's proposed surreply *raises arguments that it could have, but failed to raise in its opposition brief* in response to the argument in Facebook

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<sup>1</sup> The Local Rules prohibit a party from filing additional briefs, affidavits, or other papers in support of a motion without receiving prior approval of the Court. L.R. 7.1(B)(3). *See also Kondrath v. Arum*, 881 F.Supp. 925, 927 n.2 (D. Del. 1995) (noting that party's filing was improper under the Local Rules because the motion for leave to file a surreply brief was filed concurrently with the surreply brief); *Travelers Ins. v. Buffalo Ins. Co.*, 735 F. Supp. 492, 495 (S.D.N.Y. 1990) (granting motion to strike surreply because party improperly submitted its memorandum contemporaneously with its request for leave to file the memorandum).

Defendants' opening brief that ConnectU's original Complaint incorrectly asserted diversity. Furthermore, Facebook Defendants already amended their reply brief at the request of ConnectU.

Accordingly, the Court should deny ConnectU's motion to file a surreply brief.

Dated: December 1, 2005

Respectfully submitted,

DEFENDANTS ZUCKERBERG, MOSKOVITZ,  
MCCOLLUM, HUGHES, and FACEBOOK, INC.

By their Attorneys,

/s/ Jeremy P. Oczek

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